

AF/B754

Attorney Docket: 1860/48111RE
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

5/19/07

Applicant: GERD BRANDTHORST ET AL.

Serial No.: 09/368,505 Group Art Unit: 3754

Filed: AUGUST 5, 1999 Group Director: Richard BERTSCH

Title: DEVICE FOR EMPTYING A FILM TUBE (PENTAMIX REISSUE)

CONDITIONAL NOTICE OF APPEAL RECEIVED

Commissioner for Patents
Washington, D.C. 20231

JAN 31 2003
TECHNOLOGY CENTER R3700

Sir:

A third non-final Office Action in this case was mailed November 30, 2001. A Reply was filed on February 20, 2002, and, pursuant to 37 C.F.R. 1.191(a) a Notice of Appeal was on March 12, 2002 and the Appeal Brief was timely filed on April 10, 2002.

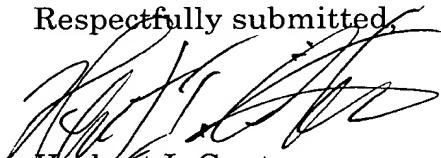
The Examiner issued a Final Office Action on July 5, 2002 erroneously stating that the Notice of Appeal and Appeal Brief are improper since the reply filed on April 20, 2002 (actually February 20, 2002) had not yet been examined.

A Petition under 37 C.F.R. 1.181 to withdraw the Office Action mailed July 5, 2002, and to order the Examiner to write an Examiner's Answer to the Brief on Appeal filed April 10, 2002, or in the alternative to consider the Notice of Appeal filed March 12, 2002, as being a response to the improper final rejection, was filed on July 16, 2002. To date, no decision on the Petition has

been received despite the filing of two Status Requests on October 8, 2002, and December 4, 2002.

Accordingly, even though it is believed that no second Notice of Appeal is necessary under the circumstances, this Conditional Notice of Appeal is being filed in an abundance of caution. The Appeal Fee was already paid on March 12, 2002. Appellants hereby again appeal the rejection of Claims 6-38.

Respectfully submitted,



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January 6, 2003

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